IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 21ST JUNE 2007 / 31ST JYAISHTA 1929

MFA.No. 1243 of 2002()

OPMV.374/1997 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THALASSERY
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APPELLANT: 3RD RESPONDENT IN M.V.O.P.

THE ORIENTAL INSURANCE CO.LTD.,
PILIMOOTTIL BUILDINGS, P.B.NO.17, POST OFFICE JUNCTION, PUNALOOR, REPRESENTED BY THE DEPUTY MANAGER, MOTOR THIRD PARTY CLAIMS CELL, REGIONAL OFFICE, NORTH RAILWAY STATION ROAOD, ERNAKULAM, COCHIN-682 018.

BY ADV. SRI.M.JACOB MURICKAN

RESPONDENTS: PETITIONER & RESPONDENTS 1 AND 2 IN M.V.O.P.
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1. SURESH M.V., S/O. RAYARAPPAN,
MENAVEETTIL HOUSE, P.O.ULIYIL, THALASSERY,KANNUR.

2. KARUNGODAN RAJESH BABU, S/O. GOPI,
KANNOTH HOUSE, THILLENGERI AMSOM DESOM, KARKAD, KANNUR DISTRICT.

3. C.JAYARAMAN, PUTHAM KURISH VEEDU,
PARUYASSERY P.O., NELLIAM, PADAM, ALATHUR, PALAKKAD.

BY ADV. SRI.GRASHIOUS KURIAKOSE

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 21/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.No.7528/2002 in MFA.No.1243/2002

DISMISSED

21.6.2007 SD/= K.PADMANABHAN NAIR,
JUDGE.

//TRUE COPY//

P.S. to Judge.

WPC.

K.PADMANABHAN NAIR, J.

M.F.A. No. 1243 OF 2002

Dated this the 21st June, 2007.

J U D G M E N T

The third respondent insurer in O.P.(M.V.)374/1997, on the file of the Motor Accidents Claims Tribunal, Thalassery, is the appellant. The appeal is filed by the insurer challenging the award passed by the Tribunal, by which the appellant was directed to pay the compensation due to the petitioner-first respondent. The petitioner-first respondent filed the original petition impleading the owners, drivers and insurer or two vehicles, alleging that, on 21.1.96, an accident involving a jeep bearing Registration No.KLU 8350 and a lorry bearing Registration No.KA-12/2008, took place and in that accident he sustained injuries. Respondents 2 and 3 in this appeal were the owner and driver of jeep, the appellant was its insurer. Respondents 4 and 5 in the original petition were the owner and driver of the lorry, and 6th respondent its insurer. The Tribunal, after trial, exonerated respondents 4 to 6, holding that the accident occurred due to the negligence of the 2nd respondent, driver of the jeep. The Tribunal also found that the first respondent is entitled to get a compensation of Rs.

38,600/=, and directed the appellant to pay the compensation, over ruling the objection raised by it that it is not liable to pay that amount. Challenging that part of the award, this appeal is filed.

2. The Tribunal found that the accident occurred due to the negligence of the driver of the jeep, who is the first respondent in the Original Petition, and 2nd respondent in this appeal. It also found that the petitioner, first respondent, is entitled to get an amount of Rs.38,600/= as compensation. The appellant was directed to pay the compensation.

3. There is nothing on record to show that the appellant sought permission to contest the matter on merits. So, the appellant is not entitled to challenge the finding regarding negligence or the quantum of compensation awarded.

4. The only point arising for consideration in this appeal is whether the finding of the Tribunal that the appellant is liable to pay the compensation is correct. The appellant filed a written statement contending that the first respondent who was driving the jeep had no valid driving licence, at the time of accident. The appellant produced

Ext.B1 copy of the charge sheet, which shows that the charge was framed against the first respondent for driving the vehicle, without any valid driving licence. The Tribunal found that mere production of Ext.B1 was not sufficient. It was further held that the appellant did not make any effective steps to prove the facts. Second respondent, owner, filed vakalath through Adv. Sri.O.V.Jayarajan, but did not file any written statement. Appellant filed I.A.No.4106/2001 with a prayer to issue summons to the first respondent to appear and produce his driving licence. That petition was allowed and summons was issued. Even though summons was accepted by the first respondent, be did not appear or produce the driving licence. The second respondent, owner, also did not take any steps for the production of the driving licence. So, the appellant had done every thing possible for the production of the driving licence. Ext.B2 is a copy of the policy. Unless it is shown that the first respondent was holding a valid licence, the insurer cannot be made liable. I hold the appellant is not liable to indemnify the insured.

5. Considering the fact that the accident occurred prior to the amendment of the Motor Vehicles Act, I am of the view that the direction of the Tribunal to the appellant to pay the amount can be

modified to the extent of holding that after payment of the amount, the appellant can recover the amount from the owner in execution of the order passed in this case.

In the result, this appeal is allowed in part. The finding of the Tribunal that the appellant is liable to pay the amount is modified. The appellant shall pay the amount of compensation, as ordered by the Tribunal, and then recover the same from the 3rd respondent, owner, by executing this award itself, if so adviced.

K.PADMANABHAN NAIR,
JUDGE

nj.

K.PADMANABHAN NAIR, J.

M.F.A.No.1243 of 2002

J U D G M E N T

Dated: 21st June, 2007.